



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,044	01/29/2004	Gregory Richard Hintermeister	ROC920030050US1	4831
7590	01/16/2009		EXAMINER	
Grant A. Johnson IBM Corporation, Dept. 917 3605 Highway 52 North Rochester, MN 55901-7829			DESAI, RACHNA SINGH	
			ART UNIT	PAPER NUMBER
			2176	
			MAIL DATE	DELIVERY MODE
			01/16/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte: GREGORY HINTERMEISTER AND  
MICHAEL RAHN

---

Application No. 10/767,044  
Technology Center 2100

---

Mailed: January 16, 2009

---

Before TOI JOHNSON *Review Paralegal*  
JOHNSON, *Review Paralegal.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on March 28, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matter requiring attention prior to docketing is identified below.

**APPEAL BRIEF, CLAIMS APPENDIX**

A review of the Appeal Brief filed June 1, 2007 reveals that claims 1, 9, 13, 16 and 18 in the Claims Appendix of the Appeal Brief are not consistent as amended in the last entered amendment filed on June 5, 2006. The copy of the claims should be in proper format and should not include any markings such as brackets or underlining except for claims in a reissue application in accordance with 37 CFR 41.37(c)(1)(viii). Furthermore, the Claims Appendix cannot assume entry of After Final Submissions for which an Advisory Action (or other Office communication) has not advised of entry. *See also Manual of Patent Examining Procedure (MPEP) § 1205.02 (8<sup>th</sup> ed. Rev. 6, Sept 2007)* for details.

Specifically, claims 1, 9, 13, 16 and 18, as provided in the Brief's Claims Appendix, reflect the claims submitted in the amendment filed October 23, 2006.

However, the last entered amendment dated October 23, 2006, was not approved for entry. Appropriate correction of all claims provided in the Claims Appendix in proper format is required.

**CONCLUSION**

Accordingly, it is ORDERED that the application is returned to the Examiner to:

Application No. 10/767,044

- 1) hold the Appeal Brief filed June 1, 2007 defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit a “paper” which corrects the Appeal Brief’s Claims Appendix under 37 CFR § 41.37(c)(1)(viii);
- 3) acknowledge and consider any “paper” submitted by Appellant to correct the Appeal Brief; and
- 4) for such further action as may be appropriate.

Grant A. Johnson  
IBM Corporation, Dept. 917  
3605 Highway 52 North  
Rochester, MN 55901-7829